

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

FILED/ACCEPTED

MAY 22 2009

Federal Communications Commission  
Office of the Secretary

In the Matter of

)

)

Request for Review by Corr Wireless  
Communications, LLC of Decision of Universal  
Service Administrator

)

)

)

WC Docket No. 05-337

CC Docket No. 96-45

**REPLY OF CORR WIRELESS COMMUNICATIONS, LLC**

Corr Wireless Communications, LLC, ("Corr"), by its attorneys, hereby replies to the Oppositions filed Verizon Wireless and Sprint Nextel Corporation to its Request for Review in the above-captioned matter. Corr's Request received overwhelming support from a broad spectrum of carriers who have been adversely affected by the Universal Service Administration Corporation's ("USAC's") failure to implement the terms of the Commission's *Interim Cap Order*. As noted in Corr's Request, USAC has, instead, been giving effect to Verizon's "understanding" as to how the USF funds which it disclaimed in order to obtain approval for its acquisition of ALLTEL would be distributed. The result of USAC's failure to distribute the funds as directed by the Commission in the *Interim Cap Order* has been a significant shortfall in funds due to ETC's – a shortfall which exacerbates the already massive shortfall experienced by many carriers in states where new ETCs were added at the same time that the cap was imposed.

A. Verizon argues that when the Commission conditioned its approval of the ALLTEL merger on Verizon's commitment to phase down its competitive ETC high cost support over five years, "*as discussed herein*," those last three words somehow constituted oblique acceptance of Verizon's understanding of how the freed up funds would be distributed. There are several things wrong with this unique theory.

No. of Copies rec'd  
List ABCDE

094

- First, the commitment mentioned by the Commission explicitly dealt only with the phase down in high cost support – it had nothing whatsoever to do with the disposition of the monies which Verizon disclaimed. Simply stated, the "as discussed herein" language modified only the phase down commitment and nothing else. Of course, Sprint acknowledges that even this thin reed was not present in the order approving *its* merger. In Sprint's case, there is nothing whatsoever for USAC to be basing its treatment of the freed up funds on.

- Second, Verizon's voluntary and unilateral "commitment" could only apply to matters which were within its control. It was certainly within Verizon's province to renounce receipt of USF funds. On the other hand, the monies which Verizon renounced did not belong to Verizon in the first place; they were and are part of the public USF account. It was therefore not Verizon's place to dictate to the Commission who should or should not receive public funds.

- Third, while Verizon may have wished that the Commission had adopted its understanding of how the unused funds would be distributed, the Commission did not do so. The Verizon-ALLTEL order stated only that it was Verizon's understanding that the renounced funds would not go to other carriers – not that it was the Commission's understanding. Verizon could have rejected the condition imposed by the Commission (which accepted Verizon's voluntary commitment but said nothing about the disposition of the money) when the Verizon-ALLTEL order was released. It chose not to challenge the order at that time. It cannot now import a new provision into the order which was not there in the first place. In other words, it is Verizon rather than Corr who is trying to effect an untimely reconsideration of the Verizon-ALLTEL order.

- Fourth, actions by an administrative agency are not a game of three card monte. There were hundreds of millions of dollars at stake in the USF monies disclaimed by Verizon. The

Commission could not possibly have intended to adopt an order secretly and radically changing the normal disposition of those funds – and directly contradicting the plain language of the *Interim Cap Order* – without the slightest discussion of how or why that might have made sense.

- Fifth, if the Commission did actually do what Verizon suggests and essentially concealed the deal from the public, that provision of the Verizon-ALLTEL order would plainly be not only unlawful but reprehensible. It may not lawfully be given effect -- particularly since it would serve to overrule a regulation duly adopted in a Notice and Comment rulemaking proceeding. If it requires nothing else, the Administrative Procedures Act requires agencies to comply with the notice and comment procedures when they change a rule so as to have future adverse effects on other parties. *Sprint Corporation v. FCC*, 315 F. 3d 369 (D.C.Cir. 2003). Verizon and Sprint's "understandings" with the FCC, if given effect, would cause (and have already caused) a significant change in the distribution formula explicitly adopted in the *Interim Cap Order* with direct and predictable adverse effects on Corr and others. This cannot possibly pass APA muster.

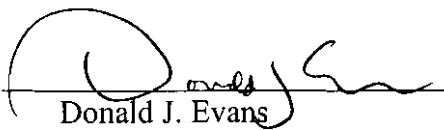
B. Verizon and Sprint both suggest that other carriers would somehow be getting a "windfall" by getting access to the Verizon and Sprint money. This is preposterous. As Corr pointed out in its Request, the overall effect of the interim cap, when coupled with the increase in the number of ETC's sharing in the capped pool, is to slash by almost half the USF funds which carriers in some states are eligible to receive to support their universal service operations. Re-distribution of the Verizon and Sprint funds to other carriers would only go to slightly ameliorate the disastrous consequences which the cap has already created and would not even come close to making up the shortfall.

C. Verizon and Sprint suggest that grant of Corr's Request would undermine the purpose of the interim cap – controlling the amount of money paid out in high cost support to competitive ETCs. On the contrary, the stated purpose of the cap was simply to place an upper limit on the support given to such entities and thus forestall any further "growth" in USF payments. Neither the Commission nor the Joint Board said anything about *reducing* the amount of support which ETCs receive below the figure established by the cap. Corr's Request is fully consistent with the Commission's stated objective in imposing the interim cap – it leaves the cap in place, but re-distributes the capped funds among the eligible carriers. No growth in the overall payments out of the Fund would occur, which is precisely what the Commission said it was trying to accomplish. The lawfulness of the Interim Cap itself is, of course, under review by the DC Circuit, but the instant Request only seeks to have the Commission give effect to the *Interim Cap Order* it actually adopted and not make matters even worse.

Corr's Request should be promptly granted to avoid any further disruption to the universal service program.

Respectfully submitted,

Corr Wireless Communications, LLC

By:   
Donald J. Evans

Fletcher, Heald & Hildreth, PLC  
1300 North 17<sup>th</sup> Street, 11<sup>th</sup> Floor  
Arlington, VA 22209  
703-812-0400

May 22, 2009

Its Attorney

## **CERTIFICATE OF SERVICE**

I, Deborah N. Lunt, a secretary with the law firm of Fletcher, Heald & Hildreth, PLC, hereby state that true copies of the foregoing **REPLY OF CORR WIRELESS COMMUNICATIONS, LLC**, was sent this 22<sup>nd</sup> day of May, 2009, by first class mail, postage prepaid, to the following:

Charles W. McKee  
Norina T. Moy  
Sprint Nextel Corporation  
2001 Edmund Halley Drive  
Reston, VA 20191

John T. Scott, III  
Tamara L. Preiss  
Verizon Wireless  
1300 I Street, NW  
Suite 400 West  
Washington, DC 20005

  
\_\_\_\_\_  
Deborah N. Lunt